IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1112 OF 2004

Shri Pandurang C. Kute .. Appellant

Versus

Shankar K.Pingale and Ors. .. Respondents

Mrs.Anjali Helekar for appellant

Mr.G.S.Godbole for respondents

CORAM : P.V.KAKADE,J.

DATE : 7th DECEMBER, 2004

P.C.:

1. The appellant-orig. plaintiff has filed the present appeal against the judgement and order passed by the Joint District Judge,Pune dated 27.6.2004 dismissing the appeal and confirming the judgement and decree passed by Civil Judge dated 28.11.2004 directing the appellant-defendant to hand over possession of the suit

room to the plaintiffs.

2. I heard the learned counsel for both the parties. Perused the record and compilation of documents made available by the parties.

3. The plaintiff filed the suit against the present appellant for possession of Room No.13 in his occupation. The plaintiffs are the real brothers. the land bearing survey No.37, Hissa No.2A out of which 2 Are area has been purchased by their father from one Dinkar Mahadeo Gokhale vide Sale Deed dated 7.4.11984 for Rs.1000/= and it was registered accordingly. The plaintiffs have erected as chawl of 2 rooms admeasuring about 10 x 10 ft. and there are three rooms adjacent to each other and they have been registered with the Grampanchayat. It was the case of the plaintiffs that being the son of sister of their father, the defendant was allowed to stay in one of the rooms during the life time of Krushna Bapu Pingale and since then the defendant was staying there as gratuitous tenant, as he was need of residential premises for his business at Kamseth. It was the case of the plaintiffs that the defendant was given accommodation till alternative

arrangement made by him but after the death of plaintiffs father, the plaintiffs demanded the possession of the premises from the defendant. However, he did not handed over the premises and hence the suit came to be filed.

4. The defendant challenged the suit with allegation that he had constructed the suit rooms expending out of his own pockets and the plaintiffs claim that he was a gratuitous licensee was not correct.

5. The learned trial judge adjudicated the suit on merits and came to the conclusion, on the basis of available evidence, that the plaintiffs had proved that they were owners of the property and defendant was gratuitous licensee and his licence was duly terminated by the plaintiffs and as such the plaintiffs were entitled to the decree of possession.

. The appeal was carried to the District Court, Pune. The learned Joint District Judge, Pune heard the appeal on merits and dismissed after confirming the order passed by the Lower Court. Hence the present appeal.

6. At the outset it may be noted that there is no substantial question of law involved in this appeal and all the issues involved are the issues of facts and are seen to be adjudicated by both the courts below by appreciating the evidence on record in just, proper and legal manner. Time and again the Apex Court has laid down that The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under section 100 of C.P.C. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court.

7. In the present case , as a matter of precaution I have also perused the compilation of evidence made available for the purpose and I am satisfied that appellant case that he had expended the amount of Rs.95,000/- and had constructed the suit room, was without any foundation and therefore, was rightly rejected by both the courts below.

8 In view of this aspect, I do not find any merits

in this appeal and hence it stands dismissed in limine.

9. Consequently Civil application also stands dismissed with no order as to costs.